

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIR VENT, INC.

Plaintiff,

v.

VENT RIGHT CORPORATION

Defendant.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Air Vent, Inc. ("Air Vent") hereby sets forth its Complaint for Patent Infringement against Defendant, Vent Right Corporation ("Vent Right"), as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et. seq.*, and in particular, arising under 35 U.S.C. § 271.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Air Vent, is a Delaware corporation, having its principal place of business at 4117 Pinnacle Point Drive, Suite 400, Dallas, Texas 75211. Air Vent owns numerous patents related to roof ventilation technology including, but not limited to, various ridge ventilator products.

3. Defendant, Vent Right, on information and belief, is an Ohio corporation with its principal place of business located at 27300 Center Ridge Road, Westlake, Ohio 44145. Vent Right transacts business in numerous states within the United States, the Commonwealth of Pennsylvania and within this judicial district.

adequate remedy at law, and for which Air Vent is entitled to injunctive relief under 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Air Vent prays for relief against the Defendant as follows:

A. For judgment finding that Defendant has infringed, induced the infringement of, and/or contributorily infringed United States Patent Nos. U.S. Patent Nos. 6,149,517; 6,299,528; 6,482,084; and/or 6,793,574 and that such infringements have been willful.

B. For a temporary restraining order and preliminary and permanent injunctions enjoining Defendant, its officers, agents, servants, representatives, employees, attorneys, privies, successors and assigns, and all persons and entities holding by, through, or under it, and all those acting for or on its behalf, or acting in concert with it, from directly or indirectly making or causing to be made, importing or causing to be imported, using or causing to be used, offered for sale or causing to be offered for sale, or selling or causing to be sold the infringing ridge ventilator products, or any other product which infringes any of the Air Vent Patents, and from any other further infringement, contributory infringement, or inducement of infringement of any of the Air Vent Patents as authorized by 35 U.S.C. § 283.

C. For an Order directing the Defendant and its officers, agents, servants, representatives, employees, attorneys, privies, successors and assigns, and all persons and entities holding by, through, or under it, and all those acting for or on its behalf, or acting in concert with it, to destroy all infringing products as well as all molds, machines, tooling, or other equipment used in the manufacture of products infringing any of the Air Vent Patents.

D. For monetary relief as follows:

1. A judgment requiring the Defendant to pay to Air Vent damages adequate to compensate for the infringements, but in no event less than a reasonable royalty for the use made of Air Vent's inventions by the Defendant, together with interest and costs as fixed by the Court, caused by reason of the Defendant's infringement, inducement of infringement or contributory infringement of any of the Air Vent Patents as authorized by 35 U.S.C. § 284.

2. A judgment awarding Air Vent increased damages in view of the Defendant's intentional, willful and wanton violation of the Air Vent Patents, as well as prejudgment interest, plus Air Vent's costs, expenses and attorney fees in this action as authorized by 35 U.S.C. §§ 284 and 285.

E. Such other relief as the Court deems just and proper.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

Date: January 31, 2008

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Attorneys for Air Vent, Inc.

4. Vent Right is engaged in the business of making, offering for sale, sale and use of the inventions relating to ridge ventilators for providing roof ventilation as set forth in one or more of the claims of certain United States Patents owned by Air Vent, as described more fully herein.

5. This Court has subject matter jurisdiction over this action pursuant to 35 U.S.C. § 281 and 28 U.S.C. § 1331, because the actions asserted herein arise under the laws of the United States; pursuant to 28 U.S.C. § 1332, because this action arises under an Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies; and pursuant to 28 U.S.C. § 1338(a), because there is complete diversity between the plaintiff and the defendant and, on information and belief, the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

6. Defendants are subject to personal jurisdiction in this Court pursuant to 42 Pa.C.S. § 5322, because Defendants conduct systematic and regular business activities which constitutes transacting business within the Commonwealth of Pennsylvania in accordance with 42 Pa.C.S. § 5321(a) and are subject to the jurisdiction of this Court to the fullest extent allowed under the Constitution of the United States in accordance with 42 Pa.C.S. § 5322(b).

7. Venue over this action is proper in this Court because Vent Right is regularly conducting business within this judicial district pursuant to 28 U.S.C. §§ 1391(a), 1391(b) and 1400(b), and acts of patent infringement are occurring in this judicial district.

THE PATENTS AND PRODUCTS IN SUIT

8. Air Vent is the owner of the following United States Patents (among others) that relate to ridge ventilators: (i) U.S. Patent No. 6,149,517 (the "517 Patent"); (ii) U.S. Patent No. 6,299,528 (the "528 Patent"); (iii) U.S. Patent No. 6,482,084 (the "084 Patent"); and (iv) U.S. Patent No. 6,793,574 (the "574 Patent") (collectively, the "Air Vent Patents").

9. Among other products, Air Vent makes and sells a variety of ridge ventilators (the "Air Vent Ridge Ventilators"), which are described and claimed in the Air Vent Patents. One such product is sold under the federally registered trademark "ShingleVent II®." Among other features, the Air Vent Ridge Ventilators generally include a ventilator assembly having an elongated ventilator member or body with openings for the passage of air therethrough while resisting the undesired entry of foreign matter. The ventilator assembly is adapted to be installed longitudinally overlying an open ridge of the roof. Some Air Vent Ridge Ventilators have a unique arrangement of tabs disposed at or about the opposing end walls of the ventilator, which enable the ventilator to be sufficiently flexible to be arcuately bent to accommodate a variety of different roof pitches. The ventilator body of some Air Vent Ridge Ventilators includes a plurality of passageways for receiving fasteners, such as nails. The passageways are structured to retain the fasteners therein, prior to attachment of the ventilator to the roof. In other words, the fasteners (i.e., nails) are pre-secured so as to greatly simplify the procedure used to install the ventilator on the roof.

10. Defendant, Vent Right, on information and belief, is making, using, offering for sale, importing and/or selling a ridge ventilator under the designation "Breasevent."

According to Vent Right's product information, the "Breasevent" product is alleged to offer "Ease of Installation – Quickest Install in the Industry" by way of an "exclusive fastening system" featuring pre-installed nails. A true and correct copy of this product information, which is available on Vent Right's website, www.vent-right.com, is attached as Exhibit A. Exhibit A also includes a true and correct copy of a web page from Vent Right's website, where three (3) short videos are viewable for the purpose of demonstrating the installation procedure for installing a "Breasevent" ridge vent on a building roof.

11. On information and belief, the Vent Right "Breasevent" product is available for purchase in this district. The Vent Right interactive website solicits consumers to contact Vent Right for a distributor. See Exhibit A.

12. Air Vent obtained a sample of Defendant's "Breasevent" product from a distributor who also sells Air Vent Ridge Ventilators. Upon inspection, the "Breasevent" product appears to be substantially identical to the Air Vent's "ShingleVent II[®]" product. Specifically, the two products appear to be made from the same material and to include at least the following substantially identical features: an elongated top wall (i.e., vent body); a pair of outer side walls integrally formed along the longitudinal length and depending from a respective bottom surface of the top wall and including a plurality of apertures for the passage of air therethrough; a pair of upturned edge members (i.e., external baffles); a plurality of brace members positioned at predetermined intervals along the length of the bottom surface of the top wall; a pair of transverse end walls formed along opposite ends of the ventilator; an arrangement of generally V-shaped tabs disposed at the end walls; and/or a sheet of filter material. These features are

protected by the '517 patent, the '528 patent and the '048 patent, among others. The "Breasevent" product also includes a plurality of passageways for retaining (i.e., pre-securing) fasteners (i.e., nails) prior to attachment of the ventilator to a structure (i.e., building roof). Those features are protected by the '574 patent, among others, and is present in various Air Vent Ridge Ventilators.

13. On information and belief, given the undeniable similarities between the "Breasevent" product by Vent Right and the Air Vent Ridge Ventilators, including but not limited to the "ShingleVent II[®]", Defendant had actual knowledge of the Air Vent Ridge Ventilators and associate exclusive patent rights prior to making, using, offering for sale, importing or selling the "Breasevent" product. As such, Vent Right's ongoing infringement of Air Vent's exclusive patent rights is willful, intentional and deliberate.

14. As a direct and proximate result of Defendant's acts of infringement and other violations of law, Air Vent has suffered and continues to suffer damages and irreparable harm for which there is no adequate remedy at law.

COUNT I: PATENT INFRINGEMENT
('517 PATENT)

15. Air Vent realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 14 of this Complaint.

16. The '517 Patent was duly and legally issued by the United States Patent and Trademark Office ("USPTO") for the invention entitled END-VENTILATING ADJUSTABLE PITCH ARCUATE ROOF VENTILATOR. Air Vent is the sole owner of the '517 Patent by assignment. A copy of the '517 Patent is attached hereto as Exhibit B.

17. Defendant has infringed and is infringing, has induced and is inducing others to infringe and/or has contributed and is contributing to the infringement by others of the '517 Patent by making, using, offering for sale, importing or selling in the United States ridge vents that infringe the '517 Patent and Defendant will continue to do so unless enjoined by this Court.

18. Defendant's infringement is willful and in deliberate disregard of Air Vent's rights thereunder.

19. As a direct and proximate consequence of the acts and practices alleged, Air Vent has been, is being, and unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which Air Vent is entitled to relief under 35 U.S.C. § 284.

20. By reason of the acts and practices alleged herein, Defendant has caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Air Vent for which Air Vent has no adequate remedy at law and for which Air Vent is entitled to injunctive relief under 35 U.S.C. § 283.

COUNT II: PATENT INFRINGEMENT
('528 PATENT)

21. Air Vent realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 20 of this Complaint.

22. The '528 Patent was duly and legally issued by the USPTO for the invention entitled END-VENTILATING ADJUSTABLE PITCH ARCUATE ROOF

VENTILATOR. Air Vent is the sole owner of the '528 Patent by assignment. A copy of the '528 Patent is attached hereto as Exhibit C.

23. Defendant has infringed and is infringing, has induced and is inducing others to infringe and/or has contributed and is contributing to the infringement by others of the '528 Patent by making, using, offering for sale, importing or selling in the United States ridge vents that infringe the '528 Patent and Defendant will continue to do so unless enjoined by this Court.

24. Defendant's infringement is willful and in deliberate disregard of Air Vent's rights thereunder.

25. As a direct and proximate consequence of the acts and practices alleged, Air Vent has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which Air Vent is entitled to relief under 35 U.S.C. § 284.

26. By reason of the acts and practices alleged herein, Defendant has caused, is causing, and unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Air Vent for which Air Vent has no adequate remedy at law and for which Air Vent is entitled to injunctive relief under 35 U.S.C. § 283.

COUNT III: PATENT INFRINGEMENT
('084 PATENT)

27. Air Vent realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 26 of this Complaint.

28. The '084 Patent was duly and legally issued by the USPTO for the invention entitled END-VENTILATING ADJUSTABLE PITCH ARCUATE ROOF VENTILATOR. Air Vent is the sole owner of the '084 Patent by assignment. A copy of the '084 Patent is attached hereto as Exhibit D.

29. Defendant has infringed and is infringing, has induced and is inducing others to infringe and/or has contributed and is contributing to the infringement by others of the '084 Patent by making, using, offering for sale, importing or selling in the United States ridge vents that infringe the '084 Patent and Defendant will continue to do so unless enjoined by this Court.

30. Defendant's infringement is willful and in deliberate disregard of Air Vent's rights thereunder.

31. As a direct and proximate consequence of the acts and practices alleged, Air Vent has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which Air Vent is entitled to relief under 35 U.S.C. § 284.

32. By reason of the acts and practices alleged herein, Defendant has caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Air Vent for which Air Vent has no adequate remedy at law, and for which Air Vent is entitled to injunctive relief under 35 U.S.C. § 283.

COUNT IV: PATENT INFRINGEMENT

('574 PATENT)

33. Air Vent realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 32 of this Complaint.

34. The '574 Patent was duly and legally issued by the USPTO for the invention entitled VENT WITH PRESECURED MECHANICAL FASTENERS. Air Vent is the sole owner of the '574 Patent by assignment. A copy of the '574 Patent is attached hereto as Exhibit E.

35. Defendant has infringed and is infringing, has induced and is inducing others to infringe and/or has contributed and is contributing to the infringement by others of the '574 Patent by making, using, offering for sale, importing or selling in the United States ridge vents that infringe the '574 Patent and Defendant will continue to do so unless enjoined by this Court.

36. Defendant's infringement is willful and in deliberate disregard of Air Vent's rights thereunder.

37. As a direct and proximate consequence of the acts and practices alleged, Air Vent has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which Air Vent is entitled to relief under 35 U.S.C. § 284.

38. By reason of the acts and practices alleged herein, Defendant has caused, is causing, and unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Air Vent for which Air Vent has no